

# The Corporation Journal

Issued by

## The Corporation Trust Company

Chicago, 112 W. Adams Street  
Pittsburgh, 1202 Oliver Bldg.  
Philadelphia, 1428 Land Title Bldg.  
Albany, 158 State Street  
New York, 37 Wall Street  
Washington, D. C., 501 Colorado Bldg.  
Jersey City, 15 Exchange Place  
Portland, Me., 281 St. John Street  
St. Louis, Federal Reserve Bank Bldg.

## Corporation Registration Company

Boston, 511 Exchange Bldg.

## Corporation Trust Co. of America

Wilmington, 486 duPont Bldg.

---

No. 62. Vol. 2.

October 31, 1916

Pages 237-252

---

## DOMESTIC CORPORATIONS.

### DELAWARE.

**APPOINTMENT OF RECEIVER.** It is not necessary that a complainant asking for a corporate receiver be a judgment creditor, nor that mismanagement be alleged. Insolvency is sufficiently alleged if it be averred that the company is unable to meet its debts and obligations, but the bill "should contain other allegations in order to move the court to exercise its discretion." *Sill v. Kentucky Coal & Timber Development Co.*, 97 Atl. 617.

### GEORGIA.

**RESCISSION OF SUBSCRIPTION TO CORPORATE STOCK** may not be had, even where fraud in securing it is shown, when the corporation has done business subsequent to the subscription and incurred obligations to creditors, whose rights would be impaired by granting such relief to the defrauded subscriber. *Empire Life Ins. Co. v. Brown*, 89 S. E. 1085.

**LIABILITY ON UNPAID STOCK SUBSCRIPTION** is not affected by the fact that the corporation begins business before the minimum capital is subscribed. The corporation was thereby illegally organized but "creditors dealing with the corporation had a right to presume that the requisite amount of stock had been subscribed." *Chappell v. Lowe*, 89 S. E. 777.

### ILLINOIS.

**AUTHORITY OF PRESIDENT.** A promissory note executed in the name of the corporation by its president is invalid between the parties when it was for commissions in securing fresh corporate capital and was not authorized by the directors or shareholders. This was not "an ordinary business transaction of the corporation, within the implied powers of the president acting as manager." *In re Continental Engine Co.*, 234 Fed. 58.

**MINNESOTA.**

**LIABILITY OF ONE CORPORATION FOR ACTS OF ANOTHER.** The Rainey River Improvement Co. owns and operates a dam on the U. S. side of the Rainey River; the Ontario & Minnesota Power Co., Limited, owns and operates the Canadian side. The Minnesota & Ontario Power Co. owns all the stock of both these corporations. Although this does not merge the corporate entities, the holding company is liable for the acts of the subsidiary corporations on the theory of agency. *Erickson v. Minnesota & Ontario Power Co.*, 158 N. W. 979.

**MISSOURI.**

**PAYMENT FOR STOCK BY PROPERTY.** "Stock issued for property is quite valid, and as between the corporation and the stockholder the agreement is conclusive." But there is a liability with respect to such stock to third parties who have no notice of the manner in which it was paid for at the time credit was extended, regardless of the good faith of the valuations placed upon the property. The rule that innocence of intent to overvalue is no defense has been established by the Missouri courts in construing the State Constitution and statutes, and will be followed by the federal court, irrespective of their own judgment of the propriety of such interpretation. Valuation of coal lands taken over by a corporation at over \$140 per acre, when sales are taking place in the vicinity at \$20 per acre is excessive, although it may be conceded that consolidation into a single holding increased its value. *Babbitt v. Read and others* (U. S. Circuit Court of Appeals Second Circuit, not yet officially reported).

**"NO RECOURSE" CLAUSE IN CORPORATE MORTGAGE.** Stockholders are not personally liable to bondholders for the difference between the par value of their shares and the value of property turned over to the corporation in payment, where the corporate mortgage contains a "no recourse" clause. The fact that the clause is not embodied in the bonds, but is in the mortgage, makes no difference as the bonds refer to the mortgage. "Those who wish in any case to read the extended text carefully have now the power to go to the printed mortgage, and are as likely to do so as though the bond itself contained all its limitations." *Babbitt v. Read and others* (U. S. Circuit Court of Appeals, Second Circuit, not yet officially reported).

**LIABILITY FOR TRANSFER OF STOCK PLEDGED TO SECURE USURIOUS LOAN.** C delivered 20,000 shares of mining stock to B, who then paid \$100 to C, agreeing to redeliver the stock on repayment of \$110 within fifteen days. After the expiration of fifteen days B presented the shares for transfer and the corporation cancelled the same and issued a new certificate to B. In a suit by an assignee of C against B and the corporation, it is held that the transaction constituted a pledge and not a conditional sale of the stock, that foreclosure was necessary to vest title in B, that the charge of \$10 made the loan usurious, and rendered the pledge void. The assignee of C, therefore, is entitled to the stock. *Smith v. Becker*, 184 S. W. 943.

**NEW JERSEY.**

**A RECEIVER WILL BE APPOINTED**, without showing that the corporation is insolvent and that it is not about to resume its business. It is sufficient to show that "its business has been, or is being, conducted at a great loss, and greatly prejudicial to the interest of the creditors and stockholders." *Shaw v. Standard Piano Co.*, 97 Atl. 281.

**WHETHER PREFERRED STOCK MAY BE RETIRED BY REISSUING COMMON STOCK** in its place, under section 29 of the Corporation Act of 1896, or whether cash must be paid therefor is raised but not decided in *Lazear v. American Steel Foundries*, 98 Atl. 642.

**OBJECTION TO THE RETIREMENT OF PREFERRED STOCK** comes too late, when it is asserted after three years from the time the plan was consummated and after it has been approved by over 90% of the stockholders. *Lazear v. American Steel Foundries*, 98 Atl. 642.

**INDEBTEDNESS TO STOCKHOLDERS.** With the exception of directors' qualifying shares, all the issued stock of a corporation was held by two individuals who loaned the company a large amount of money. Upon its insolvency, it was contended that these stockholders' claims should be postponed to those of other creditors. It is held, however, that the loans were bona fide and the corporation is a being apart from its shareholders with which they may deal, and that they are entitled to share equally with the other creditors. "Except in cases where it is necessary to circumvent fraud, or in cases which proceed on the theory of estoppel, or those where it is sought to take possession of property ostensibly belonging to a corporation entirely controlled and owned by the principal debtor, for the purpose of protecting the creditors of the latter, as well as the former, it will be found that the instances are rare indeed where the general and settled rule of separate corporate identity is disregarded." *Peckett v. Wood*, 234 Fed. 833.

**"PROTECTION OF MAJORITY"** is a new phrase in corporation law introduced in contradistinction to "protection of the minority." Judge Rogers says: "In proper cases courts protect minorities, even minorities of one, against the oppression of the majority of stockholders and of boards of directors. It sometimes happens, however, that a minority institute 'strike' suits and seek to oppress majorities and to involve the corporation itself in disaster for purposes of their own, and for reasons not always revealed. So that there are cases in which courts are compelled to protect minorities against majorities and majorities against minorities." *Staats v. Biograph Co.* (U. S. Cir. Ct. of Appeals, Second Circuit, not yet officially reported.)

**RESCISSION OF DIVIDENDS.** The directors of the Biograph Company on December 28, 1914, declared a 50% dividend to be paid in registered scrip certificates on February 1, 1915. On August 10, 1915, the directors rescinded this declaration. In a suit by a shareholder to recover the face of scrip proportionate to holdings of

## THE CORPORATION JOURNAL

stock, it is held that the directors acted within their rights and that recovery would be denied. Circuit Judge Rogers summarizes the law with respect to the right to reconsider the declaration of dividends as follows:

"1. If a board of directors, for example, should declare a dividend, and before any public announcement of the action has been made should reconsider the vote and rescind the action, its right to do so perhaps could not be successfully challenged.

2. If a board of directors should declare a dividend when there are at the time the declaration is made no profits to divide, and public announcement of the declaration is made, it may be that the right to reconsider and rescind would not be denied. \* \* \*

3. But if a board of directors should declare a cash dividend and make a public announcement of the fact the courts have held that thereafter the board has no right to reconsider and rescind its action. The reason seems to be that the declaration of the dividend sets apart from the profits of the corporation a sum which is to be paid to the stockholders in proportion to their shares, and that it creates a debt due from the corporation to each shareholder, resulting in the relation of debtor and creditor. \* \* \*

4. A difference seems to exist between a cash dividend and a stock dividend, so that if a board of directors declare a stock dividend the authorities appear to recognize the right of the board subsequently to rescind its action at any time prior to the actual issuance of the stock." *Staats v. Biograph Co.* (U. S. Circuit of Appeals, Second Circuit, not yet officially reported).

### NEW YORK.

**A TEN YEAR LEASE** of all of its property by a corporation is valid and *intra vires*. *New York Mail & Newspaper Trans. Co. v. Anderson*, 234 Fed. 590.

**REORGANIZATION.** A shareholder who has deposited his stock, assigned his claim against the corporation and signed an agreement stating that the Committee's purpose was to devise and carry into effect an equitable and fair plan of reorganization, is not entitled to an injunction against the Committee's transactions, in the absence of fraud or mistake. *Church v. Swetland*, 233 Fed. 891.

**CORPORATE NAME.** Pursuant to Sec. 6 of the General Corporation Law, which prohibits the use of the word "trust", "bank", "banking", "insurance", "assurance", "indemnity", "guarantee", "guaranty", "title", "casualty", "surety", "fidelity", "savings", "investment", "loan", or "benefit" as a part of its name, except by a corporation formed under the Banking Law or the Insurance Law, the use of the word "aid" cannot be employed in the name of a corporation organized under the Membership Corporation Law. *In re Incorporation of Howard Aid Society*, 160 N. Y. Supp. 789.

**OHIO.**

**LIMITATION OF ACTION ON STOCKHOLDERS' LIABILITY** of eighteen months prescribed in General Code 8688, does not apply to a suit to recover the difference between the par value of stock and the value of property turned over to the corporation in payment therefor. *Bauman v. Kiskadden*, 113 N. E. 588.

**PENNSYLVANIA.**

**RESTRICTIONS UPON THE TRANSFER OF SHARES** of stock were held to be valid and not against public policy or a restraint upon alienation in *Feldsteins Estate*, 25 D. R. 602, where upon the organization of a corporation it was agreed by all the stockholders and made a by-law of the corporation (an extract of which was attached to the certificate) that upon the decease of any stockholder within a period of ten years that the remaining stockholders should have the option to purchase the stock by paying its actual value as shown by the books of the company at the last preceding inventory and appraisalment of the net assets of the company.

**TEXAS.**

**SUBSCRIPTION TO STOCK IN AN ARIZONA CORPORATION** will be rescinded on the ground of fraud where there was suppression of the fact that a certain per cent. of the money received from the sale of stock was applied to the payment of secret commissions of officers and directors. There was a failure to disclose a certain shortage, and there was the further representation that it was a going concern and its stock a fine investment. when it was in fact insolvent. *Peerless Fire Ins. Co. v. Riveire*, 188 S. W. 254.

**VIRGINIA.**

**LIEN OF CORPORATION ON ITS OWN SHARES.** The articles of association of the United Cigarette Machine Company, Limited, an English corporation (*Corporation Journal*, p. 220), contain the following provisions:

"The company shall have a first and paramount lien upon all the shares registered in the name of each member (whether solely or jointly with others) for his debts, liabilities, and engagements, solely or jointly with any other person to or with the company, whether the period for the payment, fulfillment, or discharge thereof shall have actually arrived or not. And such lien shall extend to all dividends from time to time declared in respect of such shares."

"The directors may refuse to register a transfer of any shares upon which the company has a lien and in the case of shares not fully paid up may refuse to register a transfer to a transferee of whom they do not approve."

"The directors may retain any dividends on which the company has a lien, and may apply the same in or towards satisfaction of the debts, liabilities, or engagements in respect of which the lien exists."

Pursuant to these provisions the corporation may refuse to transfer shares stand-

## THE CORPORATION JOURNAL

---

ing in the name of one against whom the corporation has a claim for damages, although the claim is barred by the statute of limitations. *United Cigarette Machine Co. v. Brown*, 89 S. E. 850.

### WASHINGTON.

**ASSIGNMENT OF AN INDEMNITY POLICY BY A CORPORATION AFTER ITS NAME HAD BEEN STRICKEN FROM THE PUBLIC ROLLS**, for failure to pay annual license fees, is not void, and if voidable, cannot be complained of by the casualty company that issued the policy. *Davies v. Maryland Casualty Co.*, 154 Pac. 1116.

**SALE OF ENTIRE ASSETS.** The Monterey Company sold its entire property, consisting of certain mines to the Bolster Mining Company, in exchange for certain shares of its capital stock. The new company assumed the indebtedness of the old company. The stock in the old company was full paid and non assessable, that in the new company was to a small extent assessable. Minority stockholders cannot be compelled to accept shares in a new company, but they will not be heard to object, when suit is begun about two years after the exchange of stock has been effected and not until proceedings have been instituted to sell some of the exchanged shares for unpaid assessments. *Grant v. Monterey Gold Mining Co.*, 159 Pac. 895.

**A CORPORATION WHOSE NAME IS STRICKEN OUT FOR FAILURE TO PAY LICENSE** fees (Rem. Code, Secs. 3715d and 3715a) is not confined to a drastic sale of its assets, but may close its affairs in some other way. *Grant v. Monterey Gold Mining Co.*, 159 Pac. 895.

### WEST VIRGINIA.

**AUTHORITY OF PRESIDENT.** There is no inherent authority in the president to execute notes or other instruments for the corporation. *Flanagan v. Flanagan Coal Co.*, 88 S. E. 397.

**VOTE OF DIRECTOR INDIVIDUALLY INTERESTED.** "A resolution of a board of directors, passed at a meeting at which one of their number interested therein and necessary to a quorum is present, and voting in favor thereof, is prima facie fraudulent and void." *Flanagan v. Flanagan Coal Co.*, 88 S. E. 397.

### WISCONSIN.

**A CORPORATION PURCHASING ALL THE ASSETS** of a predecessor corporation is not liable for its infringement of patents, in the absence of an express agreement to answer for its obligations. *Racine Engine & M. Co. v. Confectioners' M. & Mfg. Co.*, 234 Fed. 876.

## FOREIGN CORPORATIONS.

### ARKANSAS.

**DOING BUSINESS.** A medicine company of another state which ships its goods to an agent in the state who breaks the original packages and retails them, paying the company either one-half of the cash produced each week, or paying cash for goods in 10 days with 3% discount, is doing business in the state so as to require qualification as a foreign corporation. *J. R. Watkins Medical Co. v. Williams*, 187 S. W. 653.

**RIGHT TO SUE ITS OWN AGENT** in the state is denied to a company which failed to qualify as a foreign corporation. *J. R. Watkins Medical Co. v. Williams*, 187 S. W. 653.

### COLORADO.

**CONTRACTS ENFORCEABLE AFTER QUALIFICATION.** An Arizona corporation acquired property in Colorado and took out an insurance policy thereon before it was admitted under the foreign corporation laws of the state. It qualified, however, before the property burned and before suit was brought on the policy. Missouri will enforce the Colorado decisions to the effect that such a contract is valid and enforceable. *Gold Issue Min. and Mill. Co. v. Pa. Fire Ins. Co. of Phila.*, 184 S. W. 999.

### CONNECTICUT.

**BOOKS AND RECORDS** of a Maine corporation kept at its office in Connecticut are subject to inspection by stockholders for the purpose of ascertaining and copying the names and residences of other shareholders. The fact that applicants for inspection are non-residents of Connecticut does not affect their rights, but mandamus in the instant case was rightfully denied because the application was not verified and because recognizance for costs was not secured. *State v. Lake Torpedo Boat Co.*, 98 Atl. 580.

### DELAWARE.

**INTERSTATE COMMERCE.** Transportation and sale by a Delaware corporation and its receiver of natural gas procured in Oklahoma and delivered in Kansas and Missouri, is interstate commerce. Confiscatory rates fixed by a State Public Utility Commission will be enjoined. *Landon v. Public Utilities Commission*, 234 Fed. 152.

## THE CORPORATION JOURNAL

---

### MISSOURI.

**ADMISSION OF FOREIGN RAILROAD CORPORATIONS** is denied by Laws of 1913, p. 179, which provides "That no railroad corporation, whether steam, street, electric, transfer or terminal, except one incorporated and chartered in and under the laws of the state of Missouri, shall be authorized or permitted to carry passengers or freight of any kind from one point in this state to another point in this state." Nevertheless the new "Wabash Railway Company" organized under the laws of Indiana will be permitted to qualify as a foreign corporation, as successor to the rights of its predecessor to do an intra state business. These rights became vested in the old company before the Laws of 1913 were enacted and are entitled to constitutional protection in the hands of its successors. *State ex rel Wabash Ry. Co. v. Roach*, 184 S. W. 969.

**THE ANNUAL REPORT**, registration statement and anti-trust affidavit for the year 1916, required by statute to be filed in July, has not been filed by 499 domestic corporations and 69 foreign corporations. The charters of these domestic corporations and the licenses of these foreign corporations to do business in Missouri have been suspended and will in due course be forfeited unless the report is filed, penalty is paid and the company reinstated. The Corporation Trust Company is prepared to assist attorneys in taking care of the reinstatement of corporations which have failed to file these reports. The matter may be taken up with our nearest office.

### NEW YORK.

**SERVICE OF PROCESS** upon the "managing agent" of a foreign corporation which has not designated a person in the state for service of process, will be valid only on proof that the plaintiff used due diligence in an attempt to serve some of the specified officers of the corporation. *Karosas v. Susquehanna Coal Co.*, 172 N. Y. App. Div. 873.

**REPRESENTATIVE ACTION OF STOCKHOLDERS** of the Chicago, Rock Island and Pacific Railway Company to compel its directors to restore to the corporation upwards of \$7,000,000 claimed to have been unlawfully diverted by them through their influence as directors, may be maintained without showing a demand that the corporation bring the action. A receiver subsequently appointed is made a party defendant. *Seagrist v. Reid*, 171 N. Y. App. Div. 755.

### OKLAHOMA.

**PENALTY FOR FAILURE TO QUALIFY.** A foreign corporation doing business in the state which has failed to qualify may not "maintain" any suit or action in any of the courts of the state. This does not preclude a defaulting cor-

## THE CORPORATION JOURNAL

---

poration from "bringing" such an action. Failure to qualify is a defense which should be pleaded in the answer. *Bailey v. Parry Mfg. Co.*, 158 Pac. 581.

**SALES ON CONSIGNMENT AS DOING BUSINESS.** A contract with a foreign corporation provided that its agent in Oklahoma was to receive buggies shipped by it, unload, uncrate and exhibit them for sale; that title was to remain in the corporation until bona fide sales were made in the due course of business; that the proceeds of sales were to be kept separate; that the buggies were to be sold for a price sufficient to pay the corporation the invoice price, taxes, freight, and insurance charges, that the agent's compensation be the amount received in excess of these charges, and that the contract should be terminated upon notice in writing by the corporation, and upon its termination or a breach thereof, it was the duty of the agent to send back all unsold goods. This is not interstate commerce, but is "doing business," so as to require compliance with the foreign corporation laws. *Bailey v. Parry Mfg. Co.*, 158 Pac. 581.

### WEST VIRGINIA.

**ACCEPTANCE OF SERVICE OF PROCESS BY THE STATE AUDITOR,** who is the attorney in fact for every foreign corporation doing business in the state (Code 1913, Section 2,918), is binding upon the corporation and gives the court jurisdiction. *Owen v. Appalachian Power Co.*, 89 S. E. 262.

### TAXATION.

#### KENTUCKY.

**BONDS OWNED BY A NON-RESIDENT** are not taxable in Kentucky because the security is located there. The situs of such personal property as choses in action may be fixed by statute at a different place than the residence or person of its owner, but it has not been so fixed by Sec. 4020, Kentucky Statutes, which only declares that "all real and personal estate within this state, and all personal estate of persons residing in this state," etc., shall be taxable in Kentucky. Under this statute it has been uniformly held that mere choses in action, although representing debts owing by persons in the state, are not taxable there if the owner's domicile is elsewhere. The fact that a foreign corporation owning such bonds may have an office in the state does not necessarily make it taxable thereon. Its legal domicile, and consequently the situs of its intangible property, is still in the state of incorporation. Intangible property owned by a non-resident may, however, require a situs for taxation in Kentucky if used exclusively in or accumulated from business done in Kentucky, but there is a manifest difference between taxing the average capital invested by a non-resident in business carried on in the state and the taxation of isolated investments. *Comm. v. Consolidated Casualty Co.*, 185 S. W. 508.

NEW YORK.

**FRANCHISE TAX—DIVIDENDS.** Section 182 of the Tax Law provides that "for the privilege of doing business or exercising its corporate franchises in this state every corporation, joint stock company or association doing business in this state, shall pay \* \* \* an annual tax to be computed upon the basis of the amount of its capital stock employed during the preceding year in this state \* \* \* ." The rate of this tax depends, among other considerations, upon the amount of dividends made or declared during the year. A corporation organized for the purpose of holding and developing real estate disposed of all its real estate and buildings receiving payment therefor partly in cash and partly in purchase money mortgages. It thereupon ceased to transact the business for which it was incorporated but continued to collect the sums due on the mortgages and distributed the same among its stockholders. During the year 1913 it collected and distributed \$36,660 paid to it as principal of a mortgage and \$13,874.57 as interest. The State Comptroller contended that the distribution of this latter sum was a dividend to the stockholders. The Appellate Division of the Supreme Court, Third Department, holds that it was a distribution of capital—that, within the meaning of the law, dividends are declared from surplus profits and there could be no surplus profits where the corporation had ceased to transact the business for which it was formed. Since the assessment was based on the alleged dividends on the capital stock employed in the state during the year, the case turned on the meaning of the word "dividend." Upon the broader question of whether the capital of the corporation was employed in the state and therefore taxable under the provisions of the law taxing corporations which neither earn nor declare dividends, the court was not persuaded that the mere holding of a purchase money mortgage, and the distribution of the principal and interest as it is collected, constitutes doing the business for which this corporation was incorporated. The court was unable to see any clear distinction between the case at bar and that of *Lehigh & N. Y. R. R. Co. v. Sohmer*, 217 N. Y. 443, so far as this particular point is concerned, and if a distinction is to be made preferred to leave it to the Court of Appeals. *People v. Saxe*, 160 N. Y. S. 752.

PENNSYLVANIA.

**CAPITAL STOCK TAX.** The capital stock report requires, among other things, an appraisal of the actual value of the capital stock of a corporation to be made by the corporate officers, in accordance with requirements of the statute. This appraisal will be presumed by the courts to be correct until the contrary is clearly shown and the burden of showing that such appraisal is inaccurate is on the Commonwealth. In a recent case the officers of the company appraised its capital stock at \$800,000. The accounting officers of the State raised the valuation to \$2,000,000. There was no testimony submitted by the Commonwealth other than the report of the company's officers and the balance sheet, showing the general condition of the company. The Common Pleas Court of Dauphin County held that the Commonwealth had not met the burden of proof required of it and the valuation placed on the capital stock by the corporate officers was permitted to stand. *Commonwealth v. Penn Traffic Company*—not yet officially reported.

## THE CORPORATION JOURNAL

See also *Commonwealth v. Gimbel Brothers*, reported in *The Corporation Journal*, p. 82.

**CORPORATE LOAN TAX.** The Act of June 17, 1913, P. L. 507, Sec. 17, provides that all bonds or certificates of indebtedness of domestic corporations are taxable. The language of this act differs from the language of prior statutes taxing similar obligations, in that the prior legislation confined the tax to obligations issued to and held by residents of Pennsylvania (Act of June 30, 1885, P. L. 193, Sec. 4) and to obligations held by persons or corporations "as trustees \* \* \* for the use, benefit or advantage of any other person" (Act of June 8, 1891, P. L. 222). The Act of 1913 imposes the tax on all obligations issued by private corporations regardless of how they may be held. The Attorney General of Pennsylvania has recently held (2 Dep. Rep. 1666) that under this act bonds of a Pennsylvania corporation are taxable in the hands of a resident trustee for a non-resident person or corporation, but are not taxable in the hands of a non-resident trustee for a resident of Pennsylvania. He also holds that such bonds held by a resident trustee for a public charity are not taxable.

**THE MERCANTILE LICENSE TAX** in Pennsylvania (Act of May 2, 1899, P. L. 184) provides for a certain tax upon the whole volume, gross, of the business transacted annually by wholesale and retail vendors. The imposition of this tax was appealed from by a corporation which sold to certain foreign countries on the ground that insofar as the tax was based upon such sales it was a tax and burden upon foreign commerce and therefore unconstitutional (*Com. vs. Crew Levick* 25 D. R. 481). It was held that the subject matter of the tax is the engagement of time, attention and labor of any one engaged in mercantile transactions measured or graduated by the volume of business in dollars and the fact that such time, attention and labor happens to result in the sale of goods in interstate or foreign commerce does not convert the tax into a tax on such sales. The decision rested on the finding of the Court that the tax was not based on sales but on the property right to engage in business in the State.

## TRUSTS AND MONOPOLIES.

### U. S. DISTRICT COURT (MARYLAND).

**THE AMERICAN CAN COMPANY** decision, previously noted in the *Corporation Journal* at page 192, wherein dissolution was denied, the court retaining jurisdiction in order that it might enter restraining orders hereafter should they then appear to be necessary, is reconsidered and reaffirmed in *United States v. American Can Co.*, 234 Fed. 1019.

### U. S. DISTRICT COURT (E. D. MISSOURI).

**THE UNITED SHOE MACHINERY COMPANY LEASES**, held, on notice for preliminary injunction to be invalid under the Clayton Act (See *Corporation Journal*, page 116), are again condemned on motion to dismiss. With respect to

a contention that leases are not commerce and therefore not interstate commerce within the terms of the Act, the Court holds that every negotiation or dealing between citizens of different states which causes an importation from one state to another is a transaction of interstate commerce. Although the lessees do not expressly bind themselves, there is an implied consent on their part to the conditions violative of the law. It is not necessary that a complaint under the Clayton Act charge that the acts of the defendants were unduly and improperly exercised, as is required in prosecutions under the Sherman law. "All that is necessary to state a cause of action under the Clayton Act is to charge that the defendants committed the acts prohibited by the statute and that they tend to substantially lessen competition or create a monopoly in interstate commerce." The Court holds that provisions in the leases requiring lessees to use lasting machinery to its full capacity, and, in case the lessee shall have more machines adapted for doing the same work than is necessary for a period of 12 consecutive months, the lessor can remove the machines not necessary, are reasonable. The Clayton Act is not unconstitutional because it affects patents previously granted. *U. S. v. United Shoe Machinery Co.*, 234 Fed. 127.

**U. S. DISTRICT COURT (S. D. NEW YORK).**

**THE CORN PRODUCTS REFINING COMPANY** has been held to be an illegal combination and is ordered to dissolve in accordance with a plan to be filed with the Federal Trade Commission. *United States vs. Corn Products Refining Co.*, 234 Fed. 964. At this writing, however, the decree has not been signed.

**UNFAIR METHODS OF COMPETITION.**

**U. S. DISTRICT COURT (E. D. NEW YORK).**

**"AUNT JEMIMA'S" PANCAKE FLOUR AND "AUNT JEMIMA'S" SYRUP.** The Davis Milling Company, a Missouri corporation, adopted the name "Aunt Jemima's" with the picture of a colored woman as a trade mark for its pancake flour; subsequently it reorganized as the Aunt Jemima Mills Company. Meanwhile Rigney & Co., a New York corporation, adopted a similar mark for a pancake syrup. In a suit for infringement of trade mark and for unfair competition, it is held that the two articles differ in their descriptive qualities so that there is no direct competition between them. Relief is denied. *Aunt Jemima Mills Co. v. Rigney & Co.*, 234 Fed. 804.

**U. S. DISTRICT COURT (S. D. NEW YORK)**

**COPYING A DESIGN** is not in itself unfair competition, but where the imitation is likely to cause confusion among buyers the injured manufacturer may obtain relief and evidence of the success of the deception is not required. A corporation which supplied the "champion X" spark plugs to the Ford Motor Car Company at substantially their cost, relying for its profits on the replacements which users of the cars must buy as the plugs wear out, is entitled to injunction against a

rival manufacturer producing a spark plug so nearly identical that, unless placed side by side, the two are not distinguishable to the inexperienced eye except by the name. *Champion Spark Plug Co. v. A. R. Mosler & Co.*, 233 Fed. 112.

## INCOME TAX.

### RULINGS AND REGULATIONS.

Since our last issue (see *Corporation Journal* p. 230) the Treasury Department has authorized withholding agents to accept Form No. 1001 prior to January 1, 1917, when executed by non-resident alien firms and corporations not engaged in business or trade within the United States and not having an office or place of business therein. Such certificates must be stamped with the words "not exempt" before presentation and the tax must be deducted (p. 576).

A decision of the Circuit Court of Appeals holds that dividends declared or assets distributed subsequent to March 1, 1913, from profits acquired prior to that date do not constitute taxable income under the act of October 3, 1913 (p. 577).

A decision under the corporation excise tax law of 1909 holds that a coal company was entitled to a deduction of 15c. for each ton mined as an allowance for depletion, and the fact that this sum was incorrectly carried on the books of the company did not justify the Government in disallowing the deduction (p. 582).

A ruling relating to the liability to tax on dividends holds that the registered stockholder will be liable for the tax, unless the name of the real owner is disclosed, and provides for a certificate to be used in such cases (p. 583).

A treasury decision provides for the procedure whereby so-called Dutch Administration Offices holding stock in their own names, against which bearer certificates are issued, may avoid liability for tax upon the stock standing in their names (p. 585).

(NOTE.—The page references are to our *Income Tax Service*, in which these rulings, decisions and regulations are printed in full).

## WAR TAX.

### RULINGS AND REGULATIONS.

Since our last issue (see *Corporation Journal* p. 232) a ruling has been issued exempting distillers of brandy from grape cheese, to which sugar solution has been added after the manufacture of wine, from the provisions of law from which distillers of brandy from other authorized fruits have been exempted (p. 393).

A set of regulations governing the collection of the estate tax under the act of September 8, 1916, prescribes the requirements of the Treasury Department as to reporting the value of estates. The term "gross estate" as used in the law is defined at length, as are also the words "net estate." Rulings are made as to the thirty day notice required of executors and administrators and as to the return to be made within one year after the decedent's death (pp. 396-407). Forms for use by

## THE CORPORATION JOURNAL

executors and beneficiaries in giving the thirty day notice are prescribed (pp. 412-415).

A ruling has been issued giving instructions relative to the assignment, compensation, etc., of gaugers at bonded wineries (p. 416).

Regulations for the administration of the munition manufacturer's tax law have been issued (pp. 418-427).

A ruling under the estate tax law holds that transfers of property made prior to September 8, 1916, or by instrument dated prior thereto, but made in contemplation of death are taxable where the transferor died after September 8, 1916, leaving a total estate exceeding the specific exemption (p. 428).

The excise tax on corporations is the subject of an extensive regulation which prescribes the times for making the returns, the computation of the tax, the collection thereof and penalties (pp. 429-437).

(NOTE.—The page references are to our War Tax Service which reports all rulings and regulations on the estate tax, munition manufacturer's tax, the corporation excise tax and special taxes of the revenue act of September 8, 1916.)

## FEDERAL RESERVE.

### RULINGS AND REGULATIONS.

Informal rulings have been made by the Board on State laws and fiduciary powers of national banks, on the meaning of the word "staple," on the meaning of the words "fiscal year" in the interlocking directorates provision of the Clayton Act, on the power of Federal Reserve Banks to purchase bonds within six months prior to maturity, on the use of trade acceptances, on the simple written endorsement by member banks of notes, drafts and bills of exchange for discount by Federal Reserve Banks, and on the minimum loan price on cotton (pp. 585-589).

The Law Department has published opinions as to the definition of agricultural paper and as to the operation of the interlocking directorates provision of the Clayton Act (pp. 589-590).

The Federal Reserve Board has issued statements explaining the operation of the recent amendment to the Federal Reserve Act, with respect to limitation of acceptances by member banks, reserves in Federal Reserve Banks and promissory notes of member banks (pp. 591-594). The Board has also made an announcement regarding the interlocking directorates provision in its application to private banks and bankers (p. 595).

The Supreme Court of the State of Michigan has held that the Federal Reserve Board has no authority to confer trust powers on national banks (p. 596).

The Federal Reserve Board has announced a change in the federal reserve districts Nos. 7 and 9, by which certain counties in Wisconsin will hereafter be part of the Chicago district.

(NOTE.—The page references are to our Federal Reserve Act Service, which reports in full all rulings, regulations and opinions of the Federal Reserve Board).

## TRADE COMMISSION.

No rulings or opinions have been issued by the Trade Commission since our last report (see Corporation Journal, p. 233).

## LEGISLATION.

**SPECIAL TRADING STAMP LEGISLATIVE SERVICE.** Reference was made in the Corporation Journal of March, 1916, pp. 155-156, to a decision of United States Supreme Court with respect to the constitutionality of the right of a State to tax the giving of trading stamps, coupons and profit-sharing certificates with the sale of merchandise. This decision served as a signal for legislation on the subject in the States whose legislatures were in session at the time. Some drastic bills were introduced and considered.

As forty-two State legislatures will convene in regular session during 1917, we anticipate the introduction of much trading stamp legislation. We have established a Special Legislative Service whereby subscribers will be kept informed of such legislation. The reports of the introduction of the bills, copies of the bills and advice of the action taken thereon will be sent on sheets for insertion in a binder to be furnished by us. Arrangements have been made for telegraphic advice of the introduction of the bills and reports will be sent out to subscribers with utmost promptness. The cost of the Service is \$100.00 for all regular and special sessions held during the year 1917 in all of the states.

## NEW PUBLICATIONS.

**THE SPECIAL EXCISE TAX ON CORPORATIONS.** We have published for distribution without charge a pamphlet containing a copy of the law and of Regulations No. 38 issued by the Treasury Department under date of October 19, 1916. Copies of this pamphlet may be obtained from our nearest office.

**THE CORPORATION JOURNAL** should be kept in a binder for convenient reference. We furnish a substantial binder for \$1.50.

**BUSINESS CORPORATIONS**  
under the  
**LAWS OF DELAWARE**

---

The Delaware Corporation Act has many provisions considered to be favorable by lawyers in selecting a state in which to form corporations.

The expense is low, the procedure simple. Meetings of stockholders and directors may be held outside the state.

Further information regarding this law and forms for use in incorporating may be had by attorneys, without charge, from our nearest office.

Among our other activities we assist attorneys in the organization of corporations in every state, in the provinces of Canada, and in Cuba and Mexico.

We never interfere between lawyer and client or usurp the place of lawyer. We recognize the lawyer only, and stand to him as an experienced, highly efficient and trustworthy clerk or assistant.

The good will of thousands of attorneys with whom we have done business is our most valuable asset.

We make a moderate charge for acting as statutory agent for corporations, furnishing the principal office to be kept in the state of incorporation and notifying the attorney of reports, taxes and other matters to be attended to.

At the time of organization we supply the attorney with forms, precedents and information as to the practical effect of statutory provisions, attend to the filing of papers and the many other details incident to incorporation.

An examination of our method of doing business is well worth the time of any lawyer. Information is cheerfully given at any of our offices.

**The Corporation Trust Company.**

V  
2  
6  
2

C  
10  
1

E  
C

x